IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 22409 of 2007(P)

OS.167/2006 of MUNSIFF COURT, PALA

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PETITIONER:

K.N.KUMARAN, MUTTIYANIKUNNEL HOUSE,
KIZHATHIRI KARA, RAMAPURAM VILLAGE,
MEENACHIL TALUK.

BY ADV. SRI.SIJU RAJAN
SRI.JOSEPH T.JOHN

RESPONDENTS:

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1. S.N.D.P.YOGAM, REPRESENTED BY ITS
GENERAL SECRETARY, S.N.D.P. YOGAM OFFICE,
KOLLAM.

2. S.N.D.P. UNION, REPRESENTED BY ITS
SECRETARY, KOOTHATTUKULAM.

3. S.N.D.P. UNION, 2509 NO. SHAKA,
REPRESENTED BY ITS SECRETARY, S.N.D.P KIZHATHARI
SHAKA, KIZHATHARI OFFICE, RAMAPURAM VILLAGE.

4. K.M.RAGHAVAN, KANDASAMKUNNEL,
KIZHATHIRI BHAGAM, RAMAPURAM VILLAGE,
MEENACHIL TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P(C).NO.22409 of 2007

Dated this the 20th day of July, 2007

JUDGMENT

This Writ Petition is filed challenging the orders, Exhibits P6 and P7. The petitioner herein moved Exhibits P4 and P5 applications for production of certain documents by the defendants. As per Exhibit P4, the writ petitioner wanted to produce the counterfoils, receipt books which takes in 28.12.1995 and also the daily register as well as other documents of 1995-96 to 2001-2002. As per Exhibit P5, he wanted the defendants to produce the audit report as well as minutes and the voucher relating to Rs.4,000/-. The court below had passed orders separately in these applications, “respondent filed affidavit stating that documents are not in their custody. Accordingly, I.A is dismissed”. The court cannot by force direct a party to produce a document when he asserts that it is not in his custody. But law is not helpless. If the writ petitioner is able to establish that the persons against whom summons are issued to produce the documents are the persons bound to keep the documents and suppose it is not produced and the court is satisfied that it is not produced for reasons which is not properly explained,

then the law envisages a situation whereby an adverse inference has to be drawn against the persons for non production of these documents. No interference is called for at this stage. I make it clear that the writ petitioner can examine the witnesses which he wants to prove his case and which is in accordance with law.

With this observation, the Writ Petition is disposed of.

M.N.KRISHNAN, JUDGE

vgs.